IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2039 OF 2005

D.C.M. Limited).. Petitioners

Versus

Sudhir Krishnaraj Thackersey and others).. Respondents

Mr.N.Engineer i/b.Zohair & Co. for the Petitioners.

Mr.S.A.Diwan with Mr.V.Iyer and Mr.Y.Gabriel i/b.Hariani & Co. for the Respondent Nos.1 to 4.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 27TH JUNE 2005

P.C.:

. The Petitioners challenge the orders of both the Courts below which are concurrent. The issues involved in the present Petition is whether once a suit has been dismissed for default, can a fresh suit be filed by the Plaintiff based on a fresh notice terminating the tenancy.

2. The Respondents had issued notice terminating the tenancy of the Petitioners in view of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. This notice was served on the Petitioners on 31st August 2000. It appears, that a suit was thereafter filed by the Respondents on 20th December 2000 before the Small Causes

Court being T.E.& R. Suit No.8/8 of 2001. This suit was dismissed for default on 10th December 2002. An application was made by the Respondents for restoration of the suit which was disallowed. It appears that after filing of the suit on 20th December 2000, the Respondents accepted the rent in respect of the suit premises and continued to do so till the suit was dismissed for default. On 3rd May 2003, a fresh notice was issued by the Respondents terminating the tenancy in view of the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999.

3. The main contention raised by the Petitioner is that once the earlier suit which was filed on the basis of the provisions of Section 3(1)(b) had been dismissed, no fresh suit could be filed on the basis of the same provisions of law. Reliance is placed on Order 9 Rule 9 of the Civil Procedure Code. Both the Courts below have held that a fresh cause of action has arisen in view of the fresh notice being issued terminating the tenancy on 28th December 2002. The learned Advocate for the Petitioners relies on the judgment of this Court in the case of *Trimbak Purshottam Patil* vs. *Yashodabai*, **AIR 1971 BOM. 205** to submit that unless there was a withdrawal of the earlier suit with liberty to file a fresh suit, the second Suit being T.E.& R. Suit No.102/111 of 2003 was not maintainable. Strong reliance

is placed on paragraph 7 of the judgment.

4. The facts of the present case can easily be distinguished as the Respondents had accepted the rent from the Petitioners even after filing of the suit. Therefore, the tenancy continued and the notice issued earlier became infructuous. In such circumstances, dismissal of the suit for default would not, in my view, preclude the Respondents from filing a fresh suit on a fresh cause of action. The fresh cause of action has arisen when the Respondents issued a fresh notice on 28th December 2002 calling upon the Petitioners to hand over vacant, peaceful possession in view of the provisions of Section 3(1)(b). I see no reason to interfere with the concurrent findings of the Courts below. Hence, Petition dismissed.

5. Mr.Engineer seeks stay of this order. Operation of this order stayed for four weeks from today.